

November 14, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*Ex Parte Notice*

Re: Carriage of Digital Television Broadcast Signals, CS Docket No. 98-120  
(also CS Docket Nos. 00-96 and 00-2)

Dear Ms. Dortch:

On November 13, representatives of Comcast Corporation discussed digital must-carry issues with (1) Commissioner Abernathy and her Legal Advisor, Stacy Robinson Fuller, (2) Commissioner Martin, and (3) Jordan Goldstein, Senior Advisor to Commissioner Copps. Comcast was represented in each of these meetings by David L. Cohen, Executive Vice President, James R. Coltharp, Chief Policy Advisor, FCC & Regulatory Policy, and the undersigned.

These presentations covered topics that have been extensively discussed in several recent *ex parte* submissions by Comcast. In particular, Mr. Cohen emphasized that the debate over multicast must-carry requires a careful assessment of statutory language and congressional findings, competitive marketplace realities (which are dramatically different today than in 1992, 1994, or 1997), constitutional considerations and judicial guidance. He stressed the heavy burden that these considerations place on those who favor enabling government rather than cable operators to decide what programming cable operators will offer to consumers.

Mr. Cohen also discussed Comcast's success in reaching voluntary digital carriage agreements (including multicast carriage arrangements) with numerous public broadcasters and Comcast's continuing efforts to work with other public broadcasters to devise practical and mutually satisfactory approaches. In the context of commercial broadcasting, Mr. Cohen discussed how multicasting must-carry differs from mandatory carriage of a single channel of programming in promoting "the widespread availability of information from a multiplicity of sources," and noted that these differences are even greater in an environment in which media ownership rules allow a single entity to hold two or even three TV broadcast licenses in the same geographic area. He also explained that expanding broadcasters' must-carry rights could compound problems that have repeatedly arisen in retransmission consent negotiations, *e.g.*, by giving broadcasters additional leverage to use in seeking carriage of and payment for their affiliated cable programming networks. For these and other reasons

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previously discussed on the record, Mr. Cohen concluded, expanded must-carry rights are not needed from a policy perspective, nor sustainable from a legal perspective.

One new question that arose in the discussions was the interplay between the digital must-carry proceeding and the digital broadcast public interest proceeding. Although Comcast takes no position on the public interest responsibilities that should attach to broadcasters' right to use valuable *public* resources (*i.e.*, the public airwaves), Comcast does not believe that even the establishment of significant public interest responsibilities for digital broadcasting would alter the statutory and constitutional analysis with respect to granting broadcasters expanded rights to infringe on the free speech, free press, and property rights of *private* cable operators.

This letter is filed pursuant to Section 1.1206(b)(2) of the Commission's rules. Please let me know if you have any questions.

Respectfully submitted,

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James L. Casserly

cc: Commissioner Abernathy  
Stacy Robinson Fuller  
Commissioner Martin  
Jordan Goldstein